IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7351 of 2005

Between:

1 Buddiga Suryanarayana, S/o Late Buddiga Seetaramayya, R/o D.No. 4-72-10, Lawson's bay colony, Behind Santhi " Ashram, Visakhapatnam - 17.
2 Buddiga Jayalakshmi, S/o Late Buddiga Lakshmanamurthy, R/o D.No. 4-72-10, Lawson's bay colony, Behind Santhi Ashram, Visakhapatnam - 17.
3 Buddiga Yellamma, S/o Late Buddiga Pothanna, R/o D.No. 4-72-10, Lawson's bay colony, Behind Santhi Ashram, Visakhapatnam - 17.

..... PETITIONERS

AND

1 The Visakhapatnam Municipal Corporation, rep. by its Commissioner, Visakhapatnam.
2 The Special Officer, The Visakhapatnam Municipal Corporation, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ , order or direction more particularly one in the nature of writ of mandamus declaring the action of respondents in attempting to destroy the coconut and "Mogali" garden and attempting to dispossess us from the land belonging to us in an extent of Acer 1.80 Cents in Survey No. 49/2C of 22nd Ward Chinna Waltair Visakhapatnam on 31-3-2005 night and 3-4-2005 without issuing notice and without acquiring the land under the land Acquisition Act and without paying compensation and without following the due process of law for the purpose of laying the road to a width of 60 feet , as illegal, arbitrary, capricious and violative of Principles of natural

justice and Article 300-A of Constitution of India and consequently to direct the respondents not to destroy the garden and dispossess us without following due process of law under the land Acquisition Act for laying road through our land.

Counsel for the Petitioner:SMT.N.(P).ANJANA DEVI, SATYANARAYANA

Counsel for the Respondents: MR.N.RANGA REDDY (SC FOR MNICIPAL CROP. VSP.)

The Court, at the stage of admission, made the following :

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ORDER:

Heard the learned counsel for the petitioners and the learned standing counsel appearing for respondents.

Petitioners seek a Writ of Mandamus to declare the action of the respondents in trying to dispossess them from the land in S.No.49/2C situated in 22nd Ward, Chinna Waltair, Visakhapatnam admeasuring Ac.1.80 cents and to destroy the coconut and Molagi garden raised in the said land, without following due process of law for the purpose of proposed road widening work, as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03-02-1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

> *"1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.*

2. *If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.*

3. *In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.*

4. *If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.*

5. *In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.*

6. *If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures."*

The learned Standing counsel appearing for the respondents-Municipality does not dispute the above legal position.

The writ petition is accordingly disposed of directing the respondents not to dispossess the petitioners from the land in question and not to destroy the garden

raised therein, without following the guidelines issued by the Division Bench in common order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. No costs.

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(**G. ROHINI, J**)

Date: 04-04-2005

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To

1 The Commissioner, Visakhapatnam Municipal Corporation,
Visakhapatnam.

2 The Special Officer, The Visakhapatnam Municipal Corporation, Visakhapatnam.

3 2 CD copies

4 1 CC to SMT.ANJANA DEVI, SATYANARAYANA

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THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 7351 of 2005

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4th April, 2005.